United Nations PCNICC/2000/WGEC/L.1

Preparatory Commission for the International Criminal Court

Distr.: Limited
23 June 2000

Original: English

Preparatory Commission for the International Criminal Court
Working Group on Elements of Crimes
New York
13-31 March 2000
12-30 June 2000
27 November-8 December 2000

Report of the Working Group on Elements of Crimes

Explanatory note: The structure of the elements of the crimes of genocide, crimes against humanity and war crimes follows the structure of the corresponding provisions of articles 6, 7 and 8 of the Rome Statute. Some paragraphs of those articles of the Rome Statute list multiple crimes. In those instances, the elements of crimes appear in separate paragraphs which correspond to each of those crimes to facilitate the identification of the respective elements.

Elements of crimes

Contents

Article		*Page*
	General introduction	3
6	**Genocide**	
	Introduction	4
6 (a)	Genocide by killing	4
6 (b)	Genocide by causing serious bodily or mental harm	4
6 (c)	Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction	5
6 (d)	Genocide by imposing measures intended to prevent births	5
6 (e)	Genocide by forcibly transferring children	5

00-49899 (E) 260600

7 **Crimes against humanity** ..... See Add.1

8 **War crimes** ..... See Add.2

Elements of crimes

General introduction

1. Pursuant to article 9, the following Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8, consistent with the Statute. The provisions of the Statute, including article 21, and the general principles set out in Part 3 are applicable to the Elements of Crimes.

2. As stated in article 30, unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge. Where no reference is made in the Elements of Crimes to a mental element for any particular conduct, consequence or circumstance listed, it is understood that the relevant mental element, i.e., intent, knowledge or both, set out in article 30 applies. Exceptions to the article 30 standard, based on the Statute, including applicable law under its relevant provisions, are indicated below.

3. Existence of intent and knowledge can be inferred from relevant facts and circumstances.

4. With respect to mental elements associated with elements involving value judgement, such as those using the terms "inhumane" or "severe", it is not necessary that the perpetrator personally completed a particular value judgement, unless otherwise indicated.

5. Grounds for excluding criminal responsibility or the absence thereof are generally not specified in the elements of crimes listed under each crime.

6. The requirement of "unlawfulness" found in the Statute or in other parts of international law, in particular international humanitarian law, is generally not specified in the elements of crimes.

7. The elements of crimes are generally structured in accordance with the following principles:

- As the elements of crimes focus on the conduct, consequences and circumstances associated with each crime, they are generally listed in that order;
- When required, a particular mental element is listed after the affected conduct, consequence or circumstance;
- Contextual circumstances are listed last.

8. As used in these Elements, the term "perpetrator" is neutral as to guilt or innocence. The Elements, including the appropriate neutral elements, apply *mutatis mutandis*, to all those whose criminal responsibility may fall under articles 25 and 28 of the Statute.

9. The use of short titles for the crimes has no specific legal effect.

Article 6
Genocide

Introduction

With respect to the last element listed for each crime:

- The term "in the context of" would include the initial acts in an emerging pattern;
- The term "manifest" is an objective qualification;
- Notwithstanding the normal requirement for a mental element provided for in article 30, and recognizing that knowledge of the circumstances will usually be addressed in proving genocidal intent, the appropriate requirement, if any, for a mental element regarding this circumstance will need to be decided by the Court on a case-by-case basis.

Article 6 (a)
Genocide by killing

Elements

1. The perpetrator killed one or more persons.

2. Such person or persons belonged to a particular national, ethnical, racial or religious group.

3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (b)
Genocide by causing serious bodily or mental harm

Elements

1. The perpetrator caused serious bodily or mental harm to one or more persons.[1]

2. Such person or persons belonged to a particular national, ethnical, racial or religious group.

3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

[1] This conduct may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment.

Article 6 (c)
Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction

Elements

1. The perpetrator inflicted certain conditions of life upon one or more persons.

2. Such person or persons belonged to a particular national, ethnical, racial or religious group.

3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

4. The conditions of life were calculated to bring about the physical destruction of that group, in whole or in part.[2]

5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (d)
Genocide by imposing measures intended to prevent births

Elements

1. The perpetrator imposed certain measures upon one or more persons.

2. Such person or persons belonged to a particular national, ethnical, racial or religious group.

3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

4. The measures imposed were intended to prevent births within that group.

5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (e)
Genocide by forcibly transferring children

Elements

1. The perpetrator forcibly transferred one or more persons.

2. Such person or persons belonged to a particular national, ethnical, racial or religious group.

3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

4. The transfer was from that group to another group.

[2] The term "conditions of life" may include, but is not necessarily restricted to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.

5. The person or persons were under the age of 18 years.

6. The perpetrator knew, or should have known, that the person or persons were under the age of 18 years.

7. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.